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Approved For Release 2006/04/03 : CIA-RDP77M00144R001100180022-0

# ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Compulsory Union Bargaining  
for Federal Employees

FROM:

Robert W. Gambino  
Director of Security  
4E 60, HQS

EXTENSION

NO.

DATE

30 OCT 1975

25X1

TO: (Officer designation, room number, and building)

DATE

OFFICER'S  
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

RECEIVED

FORWARDED

1. Deputy Director  
for Administration  
7D 26, HQS

30 OCT 1975

*[Signature]*

2.

3.

4. Legislative Counsel  
7D 35, HQS  
Attn:

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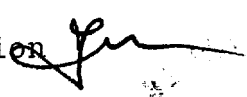
15.

OS 5 8933-A

30 OCT 1975

MEMORANDUM FOR: Legislative Counsel

STAT ATTENTION :

THROUGH : Deputy Director for Administration 

SUBJECT : Compulsory Union Bargaining  
for Federal Employees

REFERENCE : OLC request for comments on subject,  
dated 16 October 1975

1. Pursuant to your request, the Office of Security has considered the proposal as to what would be the likely security impact upon this Agency in the event its employees were to be represented by a union.

2. There are two security aspects in the make-up of the Central Intelligence Agency that run contrary to the concept of compulsory union bargaining. The first of these aspects is expressed as the predominant theme in the National Security Act of 1947 as it relates to this Agency. National security is the sole purpose of the CIA. In its role with the National Security Council, it advises, recommends, evaluates intelligence, and performs other functions solely as they pertain to national security. Therefore, when we consider why there is a CIA, what it must do, how its employees must perform, and what can be expected of them, this must be the single strongest theme in our inquiry.

3. The definition of the term national security seems to expand and contract in accordance with the times. In moments of crisis, its definition is loud and obvious; in quieter times, it may become less resounding and subject to debate. However, in every case and every time it means survival, as it pertains to the nation and as it pertains to the individuals who make up the nation. With this as its sole purpose, the CIA is, in a distinct sense, divorced from almost all the other federal agencies which were created and which exist for the purpose of managing one aspect of

OS 5 8933-A

government business. The CIA is uniquely different in purpose and because of this difference it cannot be included under a single common denominator called federal service. This is exemplified to the fullest by the fact that we are an excepted agency. We do not hire from a federal service entrance examination roster. We are not bound under Civil Service. We are in many ways different and therefore not able to lend ourselves to a federal union that directs itself to ends and means common to many agencies, but which are not common to the CIA.

4. The second security aspect in the make-up of the CIA which argues against the creation of a compulsory union is the employees themselves who make up this Agency. "No one can appreciate rules more than the man who plays the game." The Agency employee does indeed surrender some fringe privileges when he accepts rules related to his personal life that are peculiar to this Agency alone:


- a. Investigation of the spouse;
- b. In some cases, termination from employment for marrying an alien;
- c. Polygraph as a step in security processing;
- d. Travel restrictions;
- e. Cover requirements;
- f. Dismissal of employee by Director when he deems it is necessary or advisable in the interest of the United States; and,
- g. Restriction of some outside activities.

There are reasons for such rules that have their very foundation on an understanding of the Agency itself. The employee, even if he would disagree with the application of a certain restriction, would understand and support the reason behind it. The very fact that he is by his own choice a part of the Agency and dedicated to its purpose argues to this conclusion.

5. From the vantage point of these two security aspects, there are some common facets of unionism that run counter to the very purpose of this Agency, i.e., third party mediation, strikes, work slowdowns, and closed shops.

An agency whose sole purpose is national security cannot submit to strikes or work slowdowns. There are irreconcilable contradictions between the terms. No one would be more aware of this fact than the Agency employee.

6. The Office of Security emphatically believes that the above considerations argue strongly for a full exemption for this Agency from any law that would introduce compulsory union bargaining for federal employees.

  
Robert W. Gambino  
Director of Security

STAT

Distribution:

Original & 1 - Adse  
2 - DD/A

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## OFFICIAL ROUTING SLIP

TO	NAME AND ADDRESS	DATE	INITIALS
1	OLC, <span style="border: 1px solid black; display: inline-block; width: 100px; height: 1.2em; vertical-align: middle;"></span>		
2	7D35 Hqs.		
3			
4			
5			
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ACTION	DIRECT REPLY	PREPARE REPLY
APPROVAL	DISPATCH	RECOMMENDATION
COMMENT	FILE	RETURN
CONCURRENCE	INFORMATION	SIGNATURE

Remarks:

FOLD HERE TO RETURN TO SENDER

FROM: NAME, ADDRESS AND PHONE NO.		DATE
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STAT



29 October 1975

STAT

MEMORANDUM FOR:  OLCSUBJECT : Arguments to Support the Thesis that Employee Unions  
are Inappropriate for CIA

1. This is in response to your request for arguments in favor of exempting CIA from proposed bills which would establish compulsory union bargaining for Federal employees, perhaps legalize strikes by Federal Unions, or provide for arbitration when an impasse is reached.

#### Joining a Union

2. Unionization is for the ultimate purpose of securing through united action the most favorable conditions as regards wages, hours and conditions of employment. The union is organized to enable those employees who become members to negotiate matters arising between them and their employees through the intermediation of officers of the union and to accomplish their ends through concerted action. The right of employees in private industry to organize has long been recognized. In the past decade, there has been a trend toward recognition of the right of public employees in general to join labor units. Most Federal employees were given this right by Executive Order 11491, U.S. Foreign Service employees were given this right by Executive Order 11636. The President has specifically exempted CIA from Executive Order 11491 and CIA employees are not permitted to unionize.

3. The prohibition against CIA employee unions is neither arbitrary nor unreasonable. A delicate balance has always existed with respect to the whole question of public employee labor relations. There is, on the one hand, the right of a public employer to protect and promote public well-being by securing almost complete control and supervision over its employees through rules and regulations aimed at inhibiting union activity, and right of public employees, on the other hand, to join labor organizations for the purpose of improving working conditions and increasing salaries. When applied to CIA, the balance between the government and the employee must be drawn clearly in favor of the government.

4. There are special requirements for running an Agency whose collection activities involve clandestine activity and whose analytical activity yields highly classified information. This has been recognized by the Congress and is embodied in statute. Thus, CIA employees are not in the competitive Civil Service, and the Director has the authority to terminate the employment of any officer or employee of the Agency whenever he shall deem such termination necessary or advisable in the interests of the United States. The Director, moreover, has special spending authorities, and is charged with responsibility for protecting intelligence sources and methods.

5. CIA employees, for their part, are in a class apart from both employees in private enterprise and most other government workers. Charged with acting as confidential agents of the government, and given access to sensitive and highly classified information, they must owe an undivided loyalty to the government and to the public interest. CIA employees realize that employment with the Agency is not a right but is a privilege, and it is a privilege which entails necessary restriction of a number of activities which the average citizen takes for granted. First as applicants and then as employees, they sacrifice a certain measure of privacy in order to be cleared and to remain cleared to work at CIA. CIA employees are not permitted to discuss their work with those who lack clearances and a need to know, and they must be circumspect in their associations and in their utterances. Those who live under cover must cope with even greater stress.

6. Intelligence activities require personnel flexibility, on the one hand, and employee discipline on the other. Unions could reasonably be expected to argue against lateral entry of employees and to further limit this Agency's ability to transfer people with needed skills and ability from one area or component to another. Seniority rather than merit or Agency requirements may become the primary promotion and advancement criterion. Thus, unionization could threaten, if not disrupt, both flexibility and discipline. Moreover, there would be many areas in which discussion or negotiation between employees and management would be inappropriate. It would be anomalous, for example, for the DCI to negotiate with a union about hiring and firing employees in view of his statutory responsibility to protect sources and methods and his plenary authority to terminate employees.

#### Collective Bargaining

7. Separate from the right to join a union is the right of collective bargaining. It may be said in general that the various government agencies cannot abdicate or bargain away legislative discretion and are, therefore, not authorized to enter into collective bargaining agreements with public employee labor unions. Certainly to the extent that the Federal Government wishes to set a common policy for, and give equal treatment to, all government employees, it is not possible to have separate negotiations with each employee union whether that union is organized by government department or by craft or profession. In addition, any agreement negotiated by the Executive Branch would have to be approved by Congress.

8. Apart from the government-wide problems, there are certain intelligence-peculiar problems which make collective bargaining inappropriate for CIA. If CIA employees were part of a larger non-CIA bargaining unit,

CIA security would be compromised because details concerning operations, and conditions of work would become a necessary part of the negotiations. Indeed, such a union would become a prime target for the intelligence services of foreign powers. Even if only internal CIA bargaining units were formed, this Agency would, in effect, be negotiating with a union about the way operations would be run, and this could have an extremely adverse effect on the national security.

#### Arbitration

9. Any requirement that CIA arbitrate labor disputes which it has with an employee union would subject this Agency to many of the problems already enumerated. To the extent that such arbitration would be binding, the DCI would find that his ability to manage the Agency and the intelligence process had been significantly eroded. Even non-binding arbitration could cause problems, because such arbitration would involve people outside the Agency and the intelligence community and would result in additional exposure of Agency business and additional risk that intelligence methods and capabilities would be compromised.

#### Right To Strike

10. Arguments opposing the right of public employees to go on strike have been grounded on the following theories:

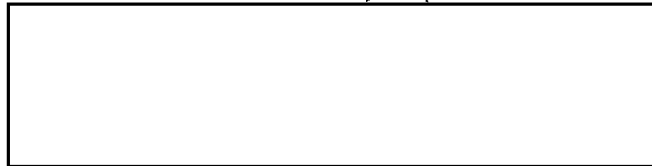
(1) Granting public employees the right to strike gives them the right to deny the authority of the government; (2) a strike by public employees is a rebellion against the very existence of the government, a situation so anomalous as to be unthinkable; (3) public employees, being agents of the government and serving a public purpose, are entirely different from employees in private industry, and a strike by them would contravene the public welfare and paralyze society; (4) since the terms of employment of public employees are fixed by the legislature, and since no discretion concerning such terms reposes in the public agency which is the actual employer, such terms are therefore not subject to the pressure of collective bargaining and strikes in support thereof; and (5) unlike private industry, the government does not perform its various functions and activities for profit.

37 ALR 3d 1150-1151

11. Strikes by CIA employees have the potential for damage far beyond that which would be caused by strikes by many other categories of government workers. Not only would essential services be disrupted, but irreparable harm to national security and to this nation's intelligence effort would result. The thought of CIA employees breaking cover and marching in front of a United States Embassy with signs reading "No Pay Raise, No Spying," or "We will not Overthrow the Government unless we get Double-Time on Sunday" is so ludicrous as to be funny. What is less humorous is the fact that antagonisms generated by strikes, or actions taken in the heat of labor-management

confrontations could have lasting effects. When striking pressmen destroy a printing press, the press can be replaced; when striking sanitation workers do not collect garbage, the resulting mess can be cleaned up. However, if operations are blown, agents revealed, or intelligence methods compromised, the damage may be irreparable. Equally important, collection and analysis of information critical to national security cannot be stopped without running grave risks. Indeed, intelligence strikes which, in effect, would blind the United States Government would create conditions which may tempt groups or nations to undertake adventures posing unacceptable risks to the United States and to world peace.

12. Finally, it should be noted that the danger of a strike does not merely arise when the right to strike has legislative sanction. Unionization of public employees per se increases the opportunity for, and probability of, strikes detrimental to the public interest. Unionization has very often been followed by strikes even when such strikes or job actions have been illegal. Recent action by teachers, firemen, police officers, and sanitation workers attest to this phenomenon.



STAT

Office of General Counsel

cc: 1 - DDA  
1 - D/Pers